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DEPUTY CLERKIN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

|                    |   |                           |
|--------------------|---|---------------------------|
| MICHAEL J. BUSHMAN | : | CIVIL NO. 1:CV-00-1230    |
| Petitioner,        | : | (Judge Kane)              |
| v.                 | : | (Magistrate Judge Smyser) |
| JAKE MENDEZ,       | : |                           |
| Respondent.        | : |                           |

PETITIONER'S OBJECTIONS TO THE U.S. MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATION

NOW COMES, the Petitioner, Michael J. Bushman, and appearing pro se, hereby files this his objections to the Magistrate Judge's Report and Recommendation, and further sets forth reasons for granting the petition for writ of habeas corpus.

**1. Facts.**

Petitioner does not have any objections to most of the facts enumerated by the Magistrate Judge in his Report and Recommendation (hereinafter referred to as "Report"), except as follows:

The government cannot establish that the Petitioner was accountable for 18.75 kilograms (or more) of cocaine in the distribution scheme.

The government, in its factual basis at the plea proffered that the Petitioner only was responsible for approximately 6363 grams of cocaine; 127 pounds of marijuana; 200 units of methqualone; 3/8 ounce of methamphetamine. Nowhere, in the indictment or the government's factual basis is 18.75+ kilograms of cocaine described. Therefore, the assumption provided by the Parole

Commission ("Commission") is vicarious and has no rational basis in the record.

2. Standard of Review.

When reviewing the Commission's decision(s), this Court must consider "whether there is a rational basis in the record for the [Commission's] conclusion in its statement of reasons." Marshall v. Lansing, 839 F.2d 933, 945 n.7 (3d Cir. 1988). Moreover, an agency must follow its own regulations, which have the force of law. Id. at 943.

3. Offense Severity Rating.

The Magistrate Judge errs in merely reciting the Commission's Notice of Action as evidence in justifying their decision to place the Petitioner's offense severity rating at Eight rather than Seven. Moreover, the Magistrate Judge errs in holding that the PSI is probative of this, especially when this amount is not corroborated, and the government's factual basis was quite different.\*

Finally, the Magistrate Judge errs in holding that this Court's review is limited to rather the Commission had "any evidence." Rather, if the evidence is accurate, by the preponderance of the evidence, and if their decision is arbitrary, or capricious. Additionally, it is clear that the Commission's actions were arbitrary and capricious, as the decision by the Commission, as cited in the Notice of Action, has no rational basis

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\* Additionally, the indictment and the factual basis holds the entire conspiracy for only 16 pounds.

herein and the Commission ignored overwhelming evidence that Petitioner was not accountable for the quantity of drugs which the Commission seeks to hold him accountable for; moreover, the decision of the Commission appears to be based solely on punitive reasons and considerations, and thus is clearly arbitrary, capricious and erroneous. see e.g., Little v. Hadden, 504 F.Supp. 558 (D.Colo. 1980).

The Commission's statement of reasons set forth in their Notice of Action ("NOA") stated that its rationale was because the Petitioner's offense involved "RICO and CCE violations in which the underlying behavior included the distribution of more than 18.75 kilograms of cocaine (purity unknown)."

Petitioner, as enumerated above, was indicted for specific quantities of narcotics in his indictment before the trial court. This was not a conspiracy of unknown quantities, but government investigators, as well as the grand jury alleged and indicted Petitioner for specific quantities. According to the government, Petitioner was accountable for 38.5 ounces (not 18.75+ KG) of cocaine. See Indictment, Section 5. Furthermore, the government provided Petitioner with a summary of its evidence and allegations against the Petitioner. This summary only mentions the same small amounts as previously stated in the indictment. See MEMORANDUM BRIEF, Exhibit A, pp. 86-90.

The Commission's decision and conclusion that the Petitioner's offense behavior involved 18.75+ kilograms of cocaine is clearly erroneous and arbitrary, and constitutes a clear abuse of discretion on the Commission's part.

The indictment, as well as the evidence produced by the government clearly shows that he was only accountable for 38.5 ounces of cocaine. The PSI, in actuality, provides the Commission with no additional factual evidence of any quantity greater than the amount contained in the indictment and repeated by the government at the plea, except for Petitioner's admission that he had estimated that he sold "roughly 14 pounds of cocaine." See MEMORANDUM BRIEF, Exhibit C, PSI, p. 16. These 14 pounds would be the equivalent of 6363 grams of unknown purity, or a category 7 offense. See MEMORANDUM BRIEF, p. 8 and *passim*.

The Commission based his rating in violation of its regulations, which state, in pertinent part;

The prisoner is to be held accountable for his own actions and the actions done in concert with others; however, the prisoner is not to be held accountable for activities committed by associates over which the prisoner has no control and could not have reasonably expected to foresee.

28 CFR § 2.20, Ch. 23, Subch. A, note 4 (emphasis added).

This regulation requires the Commission to "carve-out" Petitioner's participation in the conspiracy, and to hold him accountable, in the absence of any evidence to the contrary, only for the amount of cocaine which he admitted to distributing, 14 pounds (6363 grams), which is over 5,000 grams more than the government accused him of having.

As Petitioner alleged in the Memorandum Brief, the Commission violated its own rule requiring it to resolve prisoner disputes

concerning the accuracy of the information presented by it to a "preponderance of the evidence standard." U.S. Parole Commission Rules and Procedure Manual § 2.20-04; 28 C.F.R. § 2.19(c). Under this regulation, if the prisoner disputes the accuracy of the information presented, "the Commission shall resolve such dispute by the preponderance of the evidence standard; that is, the Commission shall rely upon such information only to the extent that it represents the explanation of the facts that best accords with reason and probability. Id.

Accordingly, the Petitioner asserts that because the Commission was presented with no evidence to the contrary, nor was his admission that he distributed 14 pounds of cocaine contradicted by the preponderance of the evidence, the Commission clearly abused its discretion when it arbitrarily held him accountable for 18.75+ kilograms of cocaine.

Parole Commission regulations requires the Commission to establish control and foreseeability before holding a prisoner vicariously responsible for coconspirator actions, as well as uncharged actions. An agency must follow its own regulations, which have the force of law. Marshal v. Lansing, 839 F.2d 933, 943 (3d Cir. 1988), and the Parole Commission's regulations clearly state that in dealing with terms of parole rather than legal responsibility for the substance or conspiratorial crime. The Commission cannot hold a prisoner responsible for the actions of his codefendants merely because the prisoner was convicted

of conspiracy or a CCE. Roberts v. Corrothers, 812 F.2d 1173, 1180 (9th Cir. 1987); Augustine v. Brewer, 821 F.2d 365, 370 n.5 & 371 n.6 (7th Cir. 1987).

The law in the Circuit clearly establishes that when reviewing the Commission's decision, a federal court must determine "whether there is a rational basis in the record for the board's conclusions embodied in its statement of reasons." Lansing, 839 F.2d at 945 n.7.

Petitioner contends that a careful review of the record by this Court would show that the Petitioner was not accountable for 18.75+ kilograms of cocaine, and that the allegations of the Commission in this regards squares neither with the facts that were before it nor with its own regulations.

The record is clear, as enumerated above as well as in the Memorandum Brief, that at the absolute outside, the most the Commission could hold the Petitioner accountable for would be 14 pounds, which is a Category Seven offense.

Therefore, it is respectfully suggested, that faced with the facts before it, the Commission could not have concluded rationally under a preponderance standard that the Petitioner was responsible for, controlled, or foreseen the sale of more than 18.75 kilograms of cocaine, especially where the evidence does not establish his involvement with more than 14 pounds. It is further suggested that as there were no facts before the Commission that Petitioner was accountable for the distribution

of more than 14 pounds of cocaine, the Commission erred in holding him accountable for 18.75+ kilograms, and that this holding was arbitrary and capricious and a clear abuse of discretion.

Therefore, it is respectfully suggested, this Court should remand this matter to the Parole Commission with instructions to reduce Petitioner's severity rating to a Category Seven. (see e.g. United States ex rel., Farese v. Luther, 953 F.2d 49, 54 (3d Cir. 1992)).

#### 4. Codefendant Disparity.

The Magistrate Judge is in err concerning that there was no co-defendant disparity in this case. Mr. Bushman, a first-time offender, is the only person within his conspiracy who is still incarcerated. Mr. Bushman has an aggregated sentence of 35 years. Petitioner has attached hereto as exhibits, copies of one co-defendant's Judgment and Commitment Order and his Docket Sheet, this co-defendant also had an aggregated sentence of 35 years, was convicted of more offenses than the Petitioner, and is a 3 time loser. This person was released on parole some time ago. As with this co-defendant, most of Petitioner's co-defendants had lengthy criminal records, while, as previously stated, Petitioner is a first time offender.

The Parole Commission, once again, did not follow their own regulations, and there is unwarranted co-defendant disparity in violation of the Commission regulations found in the Manual at § 2.20-09, and under the rule of parsimony at 2.20-07.

All of Petitioner's codefendants have been released on parole, including Richard Bryant who was released 10-08-99 on parole, and several of these, excluding Petitioner, had prior convictions. Moreover, the government in their Response to the Show Cause Order stated that Codefendant Richard Bryant was required to serve his sentence to expiration (i.e. denied him a parole release). Response at 12. It strikes the Petitioner as kind of funny that Mr. Bryant is currently out of prison on parole, when his sentence was as long as the Petitioner's. See Exhibits (attached).

Finally, Petitioner could not have been more culpable. He was not the codefendant with prior convictions.

The Commission is required to follow their own regulations. Lansign, supra. Commission regulations require, if at all possible, no codefendant disparity. See Commission Manual § 2.20-09.

Therefore, it is evident that review by this Court is necessary in order to insure that the Commission "has followed criteria appropriate and rational and consistent" with its enabling statutes and that its decision "is not arbitrary or capricious, nor based on impermissible considerations." Zannio v. Arnold, 531 F.2d 687, 690 (3d Cir. 1976).

##### 5. Conclusion.

Petitioner has satisfied the requirements for issuance of a writ of habeas corpus. It is clear that the Commission has held the Petitioner to a higher severity rating than is permissible under the Commission's rules and regulations and 28 C.F.R. The

Commission had absolutely no reliable evidence in order to substantiate its arbitrary and capricious decision.

It is a fundamental principle that federal courts will require that evidence used to enhance an inmate's offense severity rating be more reliable than a bald assertion. Gambino v. Morris, 134 F.3d 156, 162-63 (3d Cir. 1998).

Moreover, under 18 U.S.C. § 4206(c), the Commission must establish good cause, a factor sorely missing here, for denying release on parole under the appropriate guidelines, and the Commission must have a substantial reason, back by reliable evidence, and said decision must be in good faith and on factors which are not arbitrary, irrational, unreasonable, irrelevant, or capricious. Gambino, 134 F.3d at 162-63.

Finally, a statutory interim hearing should have been held for the Petitioner pursuant to 18 U.S.C. § 4208. The mere fact that the Commission has written a regulation stating that such a hearing is not necessary is irrelevant and forms no basis for denying the Petitioner a hearing which he is entitled to by law. The Commission, as an agency of the United States Executive Department is mandated to obey acts of Congress, irrespective of their own interagency regulations or rules. The Commission's rules and regulations cannot "trump" or repeal Acts of Congress. Complaint of Nautilus Motot Tanker Co., Ltd., 85 F.3d 105 (3d Cir. 1996); Cf. Barseback Kraft AB v. United States, 127 F.3d 1471 (Fed. Cir. 1997)(regulation

cannot override clearly stated statutory requirement).

Petitioner was clearly prejudiced by the denial of such hearing, and he was unable to present the Commission with factors that would have warranted an earlier parole date and/or a prorated release date.

WHEREFORE, facts and premises considered, the Petitioner prays that this Court will grant the petition for writ of habeas corpus.

Dated: October 19, 2000

Respectfully submitted:

Michael J. Bushman

Michael J. Bushman  
Reg. No. 22758-083  
USP Allenwood  
P.O. Box 3000  
White Deer, PA. 17887-3000

CERTIFICATE OF SERVICE

I do hereby certify that on this 19 day of October, 2000, I caused a true and correct copy of the above and foregoing pleading to be mailed, first-class, postage prepaid, to the following:

Kate L. Mershimer, Esq.  
Assistant U.S. Attorney  
316 Federal Building  
240 West Third Street  
Williamsport, PA. 17703

by depositing same in a plain wrapper, properly addressed, with sufficient postage affixed thereto, and depositing same in an official depository for delivery by the United States Postal Service.

Michael J. Bushman

Michael J. Bushman

| CRIMINAL DOCKET U.S. District Court  |                | U.S.     | CLASS / PUNITIVE |
|--|----------------|----------|------------------|
| PO   | 04/22/92       | Appellee | 08/11/87 CR      |
| Mail   | 2298           | vs       | 16               |
| Phone  | On Application | BY RICK  | 16               |
| Flight   | Offender       | ATLAS    | 16               |
| U.S. TITLE SECTION (CONTINUED FROM FRONT PAGE) (VERSES CHANGED)              |                |          |                  |
| I. 18:2312 Interstate transportation of stolen prop. (CCS. 25 & 142) 2       |                |          |                  |
| I. 21:848 Continuing Crim. Enterprize (CC. 30) 1                             |                |          |                  |
| I. 18:371 Conspiracy to commit arson (re: I.18:844(f)) (CC. 125) 1           |                |          |                  |
| I. 18:844(f) & Arson (CC. 126,129) 2   |                |          |                  |
| I. 18:844(i) & Attempted Arson (CCs. 127,128) 2                              |                |          |                  |
| T. 26:845,5661(d) 8 5871 Poss. of a destructive device (CCs. 130,133,134) 3  |                |          |                  |
| T. 18:222(h)(1) 4924 Poss. of firearm by convicted felon (CC. 135) 1         |                |          |                  |
| T. 18:2421 Interstate travel in aid of prostitution (CC. 144) 1              |                |          |                  |
| I. 18:3701 & 2 False statements to a Federal agency (CCs. 145, 146,147) 3    |                |          |                  |
| I. 18:3701 & 2 Conspt. to Poss. destructive devices (CC. 131) 1              |                |          |                  |
| I. 26:5845,5861(d) 5871 Poss. of destructive device superseding CCS. 1281, 1 |                |          |                  |

| DATE<br>1982       | Case No.<br>CR. 87-100-N  | Def.<br>(BRYANT), Richard  | VI. EXCLUDABLE DATES<br>Master Docket, Multiple Defendant Case Page 1 of 1  |
|--------------------|---|--|---|
| 1982, 11<br>pt. 30 | V. PROCEEDINGS<br>INDICTMENT returned and filed in open Court. Court directed that Indictment be SEALED. (See order entered in open Court.) BENCH WARRANTS dir. to issue NO BOND SET - Deft. to be detained. B/W to be del. to DEA Agt. Pickering on 8/13/87. MOTION & ORDER <u>unsealing</u> Indictment ent. & filed; JCC, Jr., Judge.   | JCC, Jr., Judge. COURT PROCEEDINGS (JCC, Jr., Judge/H. Weiss, OCR) - U.S. appear. thru Robert Seidel, Jr., AUSA. Deft. pres. (IN CUST.) w/o cnsl. Came on for arr. Copy of Ind. prev. furn. to deft. Deft. desires to retain cnsl. Court granted recess for deft. to contact cnsl. LATER: Arr. cont. to 10-21-87 for deft. to make arrangements to retain cnsl. Deft. remanded to cust of Mshl. U.S. Mshl. Papers recd. (SO.D. Ohio) inc. ORDER OF DETENTION PENDING TRIAL recd. 8/15/87 (10-22-87). | 1. 11<br>2. 21<br>3. 22   |
| pt. 23             | COURT PROCEEDINGS (JCC, Jr., Judge/H. Weiss, OCR) - U.S. appear. thru Robert Seidel, Jr., AUSA. Deft. pres. (IN CUST.) w/o cnsl. Came on for arr. Copy of Ind. prev. furn. to deft. Deft. desires to retain cnsl. Court granted recess for deft. to contact cnsl. LATER: Arr. cont. to 10-21-87 for deft. to make arrangements to retain cnsl. Deft. remanded to cust of Mshl. U.S. Mshl. Papers recd. (SO.D. Ohio) inc. ORDER OF DETENTION PENDING TRIAL recd. 8/15/87 (10-22-87). | COURT PROCEEDINGS (JCC, Jr., Judge/H. Weiss, OCR) - U.S. appear. thru Robert Seidel, Jr., AUSA. Deft. pres. (IN CUST.) w/o cnsl. Came on for arr. Copy of Ind. prev. furn. to deft. Deft. desires to retain cnsl. Court granted recess for deft. to contact cnsl. LATER: Arr. cont. to 10-21-87 for deft. to make arrangements to retain cnsl. Deft. remanded to cust of Mshl. U.S. Mshl. Papers recd. (SO.D. Ohio) inc. ORDER OF DETENTION PENDING TRIAL recd. 8/15/87 (10-22-87).                  | 4. 11<br>5. 20<br>6. 20<br>7. 20<br>8. 20   |
| pt. 23             | COURT PROCEEDINGS (JCC, Jr., Judge/H. Weiss, OCR) - U.S. appear. thru Robert Seidel, Jr., AUSA. Deft. pres. (IN CUST.) w/o cnsl. Came on for arr. Copy of Ind. prev. furn. to deft. Deft. desires to retain cnsl. Court granted recess for deft. to contact cnsl. LATER: Arr. cont. to 10-21-87 for deft. to make arrangements to retain cnsl. Deft. remanded to cust of Mshl. U.S. Mshl. Papers recd. (SO.D. Ohio) inc. ORDER OF DETENTION PENDING TRIAL recd. 8/15/87 (10-22-87). | COURT PROCEEDINGS (JCC, Jr., Judge/H. Weiss, OCR) - U.S. appear. thru Robert Seidel, Jr., AUSA. Deft. pres. (IN CUST.) w/o cnsl. Came on for arr. Copy of Ind. prev. furn. to deft. Deft. desires to retain cnsl. Court granted recess for deft. to contact cnsl. LATER: Arr. cont. to 10-21-87 for deft. to make arrangements to retain cnsl. Deft. remanded to cust of Mshl. U.S. Mshl. Papers recd. (SO.D. Ohio) inc. ORDER OF DETENTION PENDING TRIAL recd. 8/15/87 (10-22-87).                  | 9. 20<br>10. 20<br>11. 20<br>12. 20<br>13. 20<br>14. 20<br>15. 20<br>16. 20<br>17. 20<br>18. 20<br>19. 20<br>20. 20<br>21. 20<br>22. 20<br>23. 20<br>24. 20<br>25. 20<br>26. 20<br>27. 20<br>28. 20<br>29. 20<br>30. 20<br>31. 20<br>32. 20<br>33. 20<br>34. 20<br>35. 20<br>36. 20<br>37. 20<br>38. 20<br>39. 20<br>40. 20<br>41. 20<br>42. 20<br>43. 20<br>44. 20<br>45. 20<br>46. 20<br>47. 20<br>48. 20<br>49. 20<br>50. 20<br>51. 20<br>52. 20<br>53. 20<br>54. 20<br>55. 20<br>56. 20<br>57. 20<br>58. 20<br>59. 20<br>60. 20<br>61. 20<br>62. 20<br>63. 20<br>64. 20<br>65. 20<br>66. 20<br>67. 20<br>68. 20<br>69. 20<br>70. 20<br>71. 20<br>72. 20<br>73. 20<br>74. 20<br>75. 20<br>76. 20<br>77. 20<br>78. 20<br>79. 20<br>80. 20<br>81. 20<br>82. 20<br>83. 20<br>84. 20<br>85. 20<br>86. 20<br>87. 20<br>88. 20<br>89. 20<br>90. 20<br>91. 20<br>92. 20<br>93. 20<br>94. 20<br>95. 20<br>96. 20<br>97. 20<br>98. 20<br>99. 20<br>100. 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UNITED STATES DISTRICT COURT  
CRIMINAL DOCKET  
AO 266A

| PROCEEDINGS (continued) |  | V. EXCLUDABLE DELAY<br>(a)<br>(b)<br>(c)<br>(d)<br>(e)   |
|-------------------------|--|--|
| DATE<br>1982            | Document No. <sup>1</sup>  |  |
| Mar 1; 3                | Ct. 21: Comm. 15 yrs., concurr.; S.P. 3 yrs., concurr. \$50. Spec. Assess.; Ct. 22: Comm. 2 yrs., concurr.; \$50.00 Sp. Assess.; Ct. 23: Comm. 15 yrs., concurr.; S.P. 3 yrs., concurr. \$50.00 Spec. Assess.; Ct. 24: Comm. 2 yrs., concurr.; \$50.00 Spec. Assess.; Ct. 26: Comm. 15 yrs., concurr.; S.P. 3 yrs., concurr. \$50.00 Spec. Assess.; Ct. 27: Comm. 2 yrs., concurr.; \$50.00 Spec. Assess.; Ct. 28: Comm. 15 yrs., concurr.; S.P. 3 yrs., concurr. \$50.00 Spec. Assess.; Ct. 29: Comm. 15 yrs., concurr.; S.P. 3 yrs., concurr. \$50.00 Spec. Assess.; Ct. 125: Comm. 5 yrs., concurr. Ct. 129: Comm. 10 yrs., concurr.; w/consent, heretofore imp. in Ct. 1; \$5000 Fine; pay rest. of \$716,311.84. Ct. 131: Comm. 5 yrs., concurr.; \$50.00 Spec. Assess.; Ct. 132: Comm. 5 yrs., concurr.; w/consent, heretofore in, in Cts. 1 & 129; Fine \$2500.; Ct. 135: Comm. 2 yrs, concurr.; Ct. 145: Comm. 2 yrs., concurr. \$2500 Fine. On mot. of Govt., rem. cts. dis. Ct. adv. deft. of his right of appeal. Deft. remanded to custody of Mshl. JCC, Jr., Judge. Distr. o.b. |  |
| May 20                  | R. 35, filed ORDER indicating Court remains of the opinion that the sentence imposed was fair and just; ent. 5/25/88 and filed; JCC, Jr., Judge. Copies mfd. as dir. 5/25/88 by Judge's office.  |  |
| June 10                 | Jne 20<br>1990<br>ct. 23   | R. 35, filed ORDER denying deft's motion for reduction of sentence, ent. & filed, JCC, Jr., Judge. Distr.  |
| Mar 30                  | (C/A#90-1772-N)<br>;t. 30<br>;t. 30  | DEFT'S 2255 Motion filed w/attached Memorandum. DEFT'S ORDER directing the U.S. Atty to file an answer to petitioner's motion w/in thirty (30) days of the date of this Order, ent 10/29/90 and filed. (JCC,Jr., j.) Distr. made as directed. RESPONSE to petitioner's motion to vacate sentence filed.  |
| Apr 06                  | 16<br>30<br>21<br>27   | 16 NOTICE & copy of Notice of Appeal filed, to U. S. Court of Appeal, U. S. Atty. & deft. Copy of docket entries & Court's order filed 11/30/90 also fvd. to Ct. of Appeals. Distr. DISMISSAL OF PETITION FOR WRIT OF HABEAS CORPUS filed. DEFT'S MOTION TO proceed in forma pauperis filed. DEFT'S MOTION PERMITTING deft. to appeal this Court's Order of 11-30-90 in forma pauperis, ent. & filed. JCC, Jr., Judge. Copies to deft. U.S. Atty. & Clerk, U.S. Court of Appeals. o.b. |
| Apr 14<br>b. 27         | 14<br>b. 27  | Record on appeal (1 vol.) mailed to USCA. Advanced copy of opinion recd. from Court of Appeals (D.C. Affirmed) filed.  |
| Apr 19                  | r. 19  | Cert. copies of Judgment & Opinion recd. from Court of Appeals & filed (D.C. Affirmed). Record on appeal recd. copy of Judgment to Mshl; P.O., U.S. Atty. o.b.   |

(per Section 11) Start Date  
End Date  
Court DateStop Date  
End Date  
Court Date(per Section 11) Start Date  
End Date  
Court DateStop Date  
End Date  
Court DateUNITED STATES DISTRICT COURT  
CRIMINAL DOCKET  
U. S. A.  
BRYAN, RICHARD A.  
AO 266APage 3  
CR. 97-100-N  
Doc# No. 1  
Date

| PROCEEDINGS (continued) |   | V. EXCLUDABLE DELAY<br>(a)<br>(b)<br>(c)<br>(d)<br>(e) |
|-------------------------|---|--|
| DATE<br>1994            | Document No. <sup>1</sup>   |  |
| Mar 9                   | Deft's 2255 Motion to vacate, set aside or correct sentence filed. (2:94cv21)   |  |
| Mar 9                   | Deft's statement in support of request to proceed sentence filed.   |  |
| Apr 6                   | IPF received. Order vacating the \$20,000.00 fine and amending the J & C previously entered to provide that restitution shall be in the total amt of \$10,000.00. In all other respects the J & C previously ent. shall remain in effect unchanged, ent & filed. JCC, Judge. Distr. ob. |  |
| Apr 15                  | Notice & copy of Notice of Appeal fvd to U.S. Court of Appeals, U.S. Atty., P.O., Mshl & deft. Copy of Order ent 4-6-94 & docket entries fvd to Ct. of Appeals.   |  |
| May 5<br>1995<br>Feb 7  | Record on appeal (3 vols.) mailed to USCA. Certified copies of Judgment and Opinion received from Court of Appeals and filed (D.C. affirmed). Copy of Judgment to Mshl; P.O.; U.S. Atty.; ob.   |  |
| 1996<br>Jan 2           | PSR returned to Probation Office.   |  |

| Yr.<br>1996 | Doc# No. 1<br>Date |
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ENDANT } RICHARD A. BRYANT \_\_\_\_\_  
 DOCKET NO. CR. 87-100-N

ENDANT } RICHARD A. BRYANT \_\_\_\_\_  
 DOCKET NO. CR. 87-100-N

of THREE (3) YEARS, as provided by the statute. Said Special Parole shall run concurrently with Special Parole previously imposed.

AS TO COUNT 11: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of FIVE (5) YEARS, unless sooner released by operation of law. Said sentence shall run concurrently with sentence imposed in Count 1. It is further ORDERED that following the release of said defendant from serving said sentence, he shall be placed on SPECIAL PAROLE for a period of THREE (3) YEARS, as provided by the statute. Special Parole shall run concurrently with Special Parole previously imposed.

AS TO COUNT 12: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of FIVE (5) YEARS, unless sooner released sooner released by operation of law. Said sentence is to run concurrently with sentence imposed in Count 1. It is further ORDERED that following the release of said defendant from serving said sentence, he shall be placed on SPECIAL PAROLE for a period of THREE (3) YEARS, as provided by the statute. Said Special Parole shall run concurrently with Special Parole previously imposed.

AS TO COUNT 13: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of FIVE (5) YEARS, unless sooner released sooner released by operation of law. Said sentence is to run concurrently with sentence imposed in Count 1. It is further ORDERED that following the release of said defendant from serving said sentence, he shall be placed on SPECIAL PAROLE for a period of THREE (3) YEARS, as provided by the statute. Said Special Parole shall run concurrently with Special Parole previously imposed.

AS TO COUNT 14: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for confinement for a period of TWO (2) YEARS, unless sooner released sooner released by operation of law. Said sentence to run concurrently with sentence imposed as to Count 1.

AS TO COUNT 15: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of TWO (2) YEARS, unless sooner released by operation of law. Said sentence shall run concurrently with sentence imposed in Count 1. It is further ORDERED that following the release of said defendant (continued)

from serving said sentence, he shall be placed on SPECIAL PAROLE for a period of THREE (3) YEARS, as provided by the statute. Special Parole shall run concurrently with Special Parole previously imposed.

AS TO COUNT 17: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of FIFTEEN (15) YEARS, unless sooner released by operation of law. Said sentence shall run concurrently with sentence imposed in Count 1. It is further ORDERED that following the release of said defendant from serving said sentence, he shall be placed on SPECIAL PAROLE for a period of THREE (3) YEARS, as provided by the statute. Special Parole shall run concurrently with Special Parole previously imposed.

AS TO COUNT 18: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of TWO (2) YEARS, unless sooner released by operation of law. Said sentence is to run concurrently with sentence imposed in Count 1.

AS TO COUNT 19: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of FIFTEEN (15) YEARS, unless sooner released by operation of law. Said sentence is to run concurrently with sentence imposed in Count 1. It is further ORDERED that following the release of said defendant from serving said sentence, he shall be placed on SPECIAL PAROLE for a period of THREE (3) YEARS. Said Special Parole shall run concurrently with Special Parole previously imposed.

AS TO COUNT 20: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of FIVE (5) YEARS, unless sooner released by operation of law. Said sentence is to run concurrently with sentence imposed in Count 1.

AS TO COUNT 21: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of FIFTEEN (15) YEARS, unless sooner released by operation of law. Said sentence shall run concurrently with sentence imposed in Count 1. It is further ORDERED that following the release of said defendant from serving said sentence, he shall be placed on SPECIAL PAROLE for a period of THREE (3) YEARS, as provided by the statute. Special Parole shall run concurrently with Special Parole previously imposed.

AS TO COUNT 22: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of TWO (2) YEARS, unless sooner released by operation of law. Said sentence is to run concurrently with sentence imposed in Count 1.

United States District Court for  
EASTERN DISTRICT OF VIRGINIA  
MOREFOLK DIVISION

United States vs.  
Richard A. Bryant

Defendant  
Docket No. CR. 87-100-N

Page 5 of 7

AS TO COUNT 23: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of FIFTEEN (15) YEARS, unless sooner released by operation of law. Said sentence is to run concurrently with sentence imposed in Count 1. It is further ORDERED that following the release of said defendant from serving said sentence, he shall be placed on SPECIAL PAROLE for a period of THREE (3) YEARS. Said Special Parole shall run concurrently with Special Parole previously imposed.

AS TO COUNT 24: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of TWO (2) YEARS, unless sooner released by operation of law. Said sentence is to run concurrently with sentence imposed in Count 1. It is further ORDERED that following the release of said defendant from serving said sentence, he shall be placed on SPECIAL PAROLE for a period of THREE (3) YEARS. Said Special Parole shall run concurrently with Special Parole previously imposed.

AS TO COUNT 26: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of FIFTEEN (15) YEARS, unless sooner released by operation of law. Said sentence is to run concurrently with sentence imposed in Count 1. It is further ORDERED that following the release of said defendant from serving said sentence, he shall be placed on SPECIAL PAROLE for a period of THREE (3) YEARS. Said Special Parole shall run concurrently with Special Parole previously imposed.

AS TO COUNT 27: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of TWO (2) YEARS, unless sooner released by operation of law. Said sentence is to run concurrently with sentence imposed in Count 1. It is further ORDERED that following the release of said defendant from serving said sentence, he shall be placed on SPECIAL PAROLE for a period of THREE (3) YEARS. Said Special Parole shall run concurrently with Special Parole previously imposed.

AS TO COUNT 28: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of FIFTEEN (15) YEARS, unless sooner released by operation of law. Said sentence is to run concurrently with sentence imposed in Count 1. It is further ORDERED that following the release of said defendant from serving said sentence, he shall be placed on SPECIAL PAROLE for a period of THREE (3) YEARS. Said Special Parole shall run concurrently with Special Parole previously imposed.

AS TO COUNT 29: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of FIFTEEN (15) YEARS, unless sooner released by operation of law. Said sentence is to run concurrently with sentence imposed in Count 1. It is further ORDERED that following the release of said defendant from serving said sentence, he shall be placed on SPECIAL PAROLE for a period of THREE (3) YEARS. Said Special Parole shall run concurrently with Special Parole previously imposed.

(continued on next page)

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AS TO COUNT 125: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of FIVE (5) YEARS, unless sooner released by operation of law. Said sentence is to run concurrently with sentence imposed in Count 1.

AS TO COUNT 129: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of TEN (10) YEARS, unless sooner released by operation of law. Said sentence is to run CONSECUTIVELY with sentence imposed in Count 1. The defendant is further directed to pay a FINE in the amount of \$5,000.00 and RESTITUTION in the amount of \$716,311.84.

AS TO COUNT 131: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of FIVE (5) YEARS, unless sooner released by operation of law. Said sentence is to run concurrently with sentence imposed in Count 1.

AS TO COUNT 132: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of FIVE (5) YEARS, unless sooner released by operation of law. Said sentence is to run CONSECUTIVELY with sentence imposed in Count 1. The defendant is further directed to pay a FINE in the amount of \$2200.00.

AS TO COUNT 135: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of TWO (2) YEARS, unless sooner released by operation of law. Said sentence is to run concurrently with sentence imposed in Count 1.

AS TO COUNT 145: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of TWO (2) YEARS, unless sooner released by operation of law. Said sentence is to run concurrently with sentence imposed in Count 1. The defendant is further directed to pay a FINE in the amount of \$2500.00.

AC 245 (Reverse)

Page 7 of 7 U.S.A. vs. RICHARD A. BRYANT CONDITIONS OF PROBATION CR. 87-100-N

Where probation has been ordered the defendant shall:

- (1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;
- (2) associate only with law-abiding persons and maintain reasonable hours;
- (3) work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. (When out of work notify your probation officer at once, and consult him prior to job changes);
- (4) not leave the judicial district without permission of the probation officer;
- (5) notify your probation officer immediately of any changes in your place of residence;
- (6) follow the probation officer's instructions and report as directed.

The court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

IT IS FURTHER ORDERED that the defendant shall pay a total special assessment of \$ 850.00 pursuant to Title 18, U.S.C. Section 3613 for count(s) 1; 2; 15; 16; 17; 18; 19; 20; 21; 22; ~~23; 24; 26; 27; 28; 29; 131~~; as follows: \$50.00 as to each of these counts.

IT IS FURTHER ORDERED THAT counts 3, 9, 25, 30, 126, 127, 128, 130, 133, 134, 144, 146 & 147 DISMISSED on the motion of the United States.

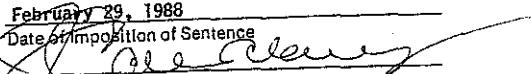
IT IS FURTHER ORDERED that the defendant shall pay to the United States attorney for this district any amount imposed as a fine, restitution or special assessment. The defendant shall pay to the clerk of the court any amount imposed as a cost of prosecution. Until all fines, restitution, special assessments and costs are fully paid, the defendant shall immediately notify the United States attorney for this district of any change in name and address.

IT IS FURTHER ORDERED that the clerk of the court deliver a certified copy of this judgment to the United States marshal of this district.

The Court orders commitment to the custody of the Attorney General ~~xxxxxxxxxxxx~~

February 29, 1988

Date of Imposition of Sentence

  
Signature of Judicial Officer

J. Calvitt Clarke, Jr., U. S. District Judge

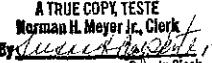
Name and Title of Judicial Officer

February 29, 1988

Date

RETURN

I have executed this Judgment as follows:

A TRUE COPY TESTE  
Norman H. Meyer Jr., Clerk  
By   
Deputy Clerk

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_

Date

, the institution designated by the Attorney

General, with a certified copy of this Judgment in a Criminal Case.

United States Marshal